October 10, 2019

Marlene Dortch, Secretary
Federal Communications Commission
445 12th St SW
Washington, D.C. 20554

Re: In the Matter of Verizon Petition for Declaratory Ruling, WT Docket No. 19-230

Dear Ms. Dortch:

I am writing on behalf of the Kentucky Municipal Utilities Association to express our opposition to the proposition, advanced in the above-captioned proceeding, that the Commission's 2018 Small Cell Order's presumptively reasonable safe harbor fee levels bear any relationship to the costs localities incur in managing the public rights-of-way. Several commenters assert that Clark County's fees cannot be cost-based in part because they exceed the safe harbor amounts established in the 2018 Small Cell Order.[1] This is an inaccurate recitation of the Commission's ruling, and the presumptively reasonable rates are not an accurate representation of the costs my community is incurring in facilitating small cell deployments.

In adopting presumptively reasonable safe harbor fee levels, the Commission did not conclude that the amounts it chose were a reasonable approximation of objectively reasonable costs. It merely declared that fees at or below those levels would be deemed presumptively reasonable. No study of local government costs was conducted by the Commission, nor was any evidence cited relating the safe harbor amounts adopted to actual local government costs. The Commission's assertion that it anticipated only very rare circumstances in which fees would exceed those safe harbors, is based solely on the fact that a number of states have imposed fee caps below the Commission's safe harbor rates..[2] The FCC rate is not based on an estimation that *costs* will exceed those safe harbor amounts in only limited circumstances, nor does it suggest, as several commenters imply,[3] that any fee above that level is presumptively not based on costs.

The Commission must reject the interpretation advanced by the Petition and several commenters in this proceeding that charging more than a safe harbor rate is, standing alone, sufficient evidence to prove that a community is charging above its costs for recurring charges Local governments are entitled to recover a reasonable approximation of their objectively reasonable costs, and the mere fact of charging a fee above a safe harbor threshold which itself was not set based on costs, cannot constitute proof that fees are not cost-based. The Kentucky

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[1] *See* Comments of ExteNet at 5; Comments of CTIA at 8; Comments of the Competitive Carriers Association at 6; Comments of T-Mobile at 8-9.
[2] *See* Small Cell Order n.233.
[3] *See, e.g.* Comments of T-Mobile at 8-9 (arguing that the mere fact that a rate exceeds the safe harbor amount is "a further reason preemption is clearly warranted").

Municipal Utilities Association strongly urges the Commission to reject this misinterpretation of the Small Cell Order suggested by parties in this proceeding.

Finally, ExteNet's request that the Commission impose a punitive "deemed granted" remedy on localities for alleged violations of the Commission's shot clocks is improperly raised in this proceeding, unsupported by evidence of need, and impermissible under the statute. Congress provided a judicial remedy for violations of Section 332(c)(7), and the Commission may not put itself in the role of the courts by imposing such a remedy. Furthermore, such a remedy raises significant public safety concerns, and there is no indication the changes adopted in the Commission's Small Cell Order are insufficient to address such alleged problems as truly exist. This oft-repeated demand must be dismissed by the Commission here, and in other relevant proceedings.

Respectfully submitted,

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